IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 142 of 2006
(Old No. 1101 of 1982)

1. Surendra Singh
2. Anand Singh
   Both sons of Sri Chandra Singh
   Both R/o Village Patwari Circle
   Kankhul, Tehsil Karanprayag
   District Chamoli …….. Appellants

Vs.

State ……Respondent.

Shri Rajendra Kotiyal, learned counsel for the appellants.
Shrii Amit Bhatt, learned A.G.A. for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

Oral: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 of Code of Criminal Procefure, 1973 (herein-after, for brevity, referred as Cr.P.C.), is directed against the judgment and order dated 22.04.1982, passed by learned Sessions Judge, Chamoli, Camp Karanprayag in Sessions Trail No. 14 of 1981, whereby accused/appellants Surendra Singh and Anand Singh are convicted under Section 147, 302, 149 and 201 of Indian Penal Code, 1860 (herein after referred as I.P.C.) and each one of them is sentenced to rigorous imprisonment for two years under section 147 I.P.C., imprisonment for life under Section 302/149 I.P.C.

and rigorous imprisonment for three years under Section 201 I.P.C.

2. We heard learned counsel for the parties and perused the record.

3. Prosecution story in brief is that Pushkar Singh (deceased), resident of Village Kankhul, Tehsil Karanprayag, had four daughters namely, Smt. Ganga, Smt. Sharda, Smt. Basanti and Ms. Kashi. He had no male issue. The two of the four namely Smt. Ganga and Smt. Sharda, were already married. Smt. Basanti also got married to accused/appellant Surendra Singh, who in fact used to work in a flour mill of Pushkar Singh (deceased) and developed illicit relations with her. Accused/appellant Anand Singh is real brother of accused/appellant Surendra Singh. Surendra Singh desired that Pushkar Singh should get married his daughter Kashi with Raju. But Pushkar Singh (deceased) go settled marriage of his fourth daughter to Gajpal Singh. On 30.11.1980, Pushkar Singh (deceased) went to Karnaprayag for taking grains and sugar for his fair price shop, which he used to run in his village. He did not return back to the village after he left on that day. After search, his body was found in the intervening night of 3/4-12-1980, lying in a rock in Dhar Sankargadi. As such, a written report was given by P.W.2 Ghanshyam Singh to Patwari of the area in the morning of 04.12.1980 (In Uttaranchal)

hills Revenue Officials are given police powers in certain areas). A crime appears to have been registered on the basis of the report lodged by Ghanshyam Singh (P.W. 2) and dead body was sent for post mortem examination after the inquest report (Ext. A-11) was prepared. The post mortem examination was conducted by P.W. 1 Dr. D.C. Awasthi on 06.12.1980 and in his opinion, cause of death was due to shock and haemorrhage as a result of injuries suffered by the deceased. Prosecution has alleged that P.W. 3 Alam Singh had seen Surendra Singh and Anand Singh along with 3-4 others persons throwing dead body in Dhar Sankargadi on 01.12.1980. The Investigating Officer after interrogating the witnesses and completing the investigation, submitted charge sheet (ext. A-14) against Surendra Singh and Anand Singh and three others namely Santu Lal, Yogeshwar Lal and Kalyan Singh for their trail for commission of offences punishable under Sections 302 and 201 I.P.C.

5. The Magistrate on receiving the charge sheet, after giving necessary copies to the accused person, as required under Section 207 Cr.P.C., committed the case to the Court of Sessions for trail. Learned Sessions Judge after hearing the prosecution and the defence, framed charge of offences punishable under Sections 147, 302/149 and 201 I.P.C. against all the

accused, who denied the charge, pleaded not guilty and claimed to be tried.

6. On this, prosecution got examined P.W. 1 Dr. D.C. Awasthi, who conducted post mortem examination, P.W. 2 Ghanshyam Singh (informant), P.W. 3 Alam Singh, P.W. 4 Govind Singh (Investigating Officer). Thereafter the court also examined C.W. 1 Smt. Basanti Devi (daughter of the deceased) and C.W. 2 Geeta Devi (widow of the deceased). The evidence was put to the accused persons under Section 313 Cr.P.C. in reply to which the accused/appellants Surendra Singh and Anand Singh admitted that Pushkar Singh had no male issue. It was also admitted that Pushkar Singh's two eldest daughters were already married and the third daughter Basanti was married to accused Surendra Singh. It is also admitted in their statements under Section 313 Cr.P.C. by the accused/appellants that marriage of Kashi (fourth daughter of deceased) was settled with one Gajpal Singh. Rest of the evidence is alleged to be false by the accused/appellants. However, no evidence was adduced in defence.

7. The trial court after hearing the parties, found accused/appellants Surendra Singh and Anand Singh guilty of the charges framed against them and convicted and sentenced them, as mentioned earlier. Rest of the accused/appellants were not found guilty

and were given benefit of reasonable doubt and acquitted. The two convicts have preferred this appeal before Allahabad High Court from where it has been received by transfer to this Court under Section 35 of U.P. Reorganisation Act,2000, for its disposal.

8. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of the deceased at the time of post mortem examination.

1. *Lacerated wound 2 ½ inches X 1 inch X bone deep over the right side of scalp, 2 inches above the medial border of the right eyebrow. Clotted blood was present around the wound.*
2. *Contusions (multiple) over the left shoulder, size ranging from 3 inches X 1 inch X ½ inch. On cutting ecchymosis present.*
3. *Contusion (multiple) over the left side of back of chest, 2 inches below the angle of left scapula. On cutting ecchymosis present.*
4. *Contusion over the dorsum of the right forearm. Size 2*

inches X 1 inch. On cutting ecchymosis present.

5. *Contusion over the right hip region. Size 3 inches X 2 inches X 3 inches below and back to the right anterior Sup. Of spine.*
6. *Contusion 3 inches X 2 inches over the right knee joint. On cutting ecchymosis.*
7. *Multiple abrasions over the right chest wall.*

The Medical Officer, who conducted autopsy, prepared the post mortem examination (Ext. A-1) and opined that the cause of death of the deceased was shock and haemorrhage, as a result of ante mortem injuries.

9. It is pertinent to mention here that it s not a case of direct eye-witness account. It is a case of circumstantial evidence. This Court has to examine whether the prosecution has been successful in proving all the circumstances, which may lead to only one conclusion that Pushkar Singh was murdered by accused/appellant Surendra Singh and Anand Singh or not. On scrutiny of the evidence on record, we found that what has been established by the prosecution in this case against the accused/appellant, as is clear from the statement of P.W. 2 Ghanshyam Singh is that

accused Surendra Singh, who was married to the third daughter of the deceased wanted that the youngest daughter Kashi should get married to his brother Raju. But the deceased settled marriage of his daughter-Kashi with one Gajpal Singh of another village. P.W. 2 Ghanshyam Singh has further stated that accused Surendra Singh has threatened the deceased that he would see how he gets married his daughter Kashi with Gajpal Singh. Then another circumstance, which is established on record is the unnatural death of Pushkar Singh (deceased), as is clear from the post mortem examination, as mentioned above. But from mere above two circumstances, it is difficult to believe that only accused Surendra Singh and his brother Anand Singh has committed murder of Pushkar Singh for the motive, mentioned above. According to the prosecution story, Pushkar Singh had gone on 30.11.1980 to Karanprayag from his village to take grain and sugar for the fair price shop, which he used to run. The trial court has relied evidence of P.W. 3 Alam Singh, who has stated that he saw on 01.12.1980, Surendra Singh and Anand Singh along with 3-4 other persons throwing something in Dhar Sankargadi over a rock. We do not find testimony of this witness reliable. It this witness had seen the occurrence, there is no explanation what prevented him from reporting the matter if not to the police to the other villagers in his village. P.W. 3 Alam Singh belongs to the same village to which Pushkar Singh

(deceased) belonged. Apart from this, evidence on record suggests that when the dead body of Pushkar Singh was found on 04.12.1980 in rivulet and the same was taken into custody by the police after the report was lodged by the villagers to the Patwari. Patwari prepared a memo (Ext. A-12), which is paper No. 34-A in the trial court's record. This document dated 04.12.1980, shows that Alam Singh has also signed it. It further creates doubt that Alam Singh had seen the accused persons throwing the dead body on 01.12.1980. Had it been so, he could have disclosed their names atleast on 04.12.1980 at the time when he signed the memo (Ext. A-12). For the first time, Alam Singh appears to have disclosed the names after 11-12 days of the incident on his examination under Section 161 Cr.P.C. Since the evidence of P.W. 3 Alam Singh does not appear to be reliable and trustworthy, it cannot be said that the fact that accused Surendra Singh and Anand Singh threw dead body on 01.12.1980, stands proved on the record. That being so, the chain of circumstances, alleged by the prosecution cannot be said to be complete, to show that it was only Surendra Singh and Anand Singh, who had murdered Pushkar Singh. Apart from this, in the above circumstances, it is also relevant to mention here that P.W. 1 Dr. D.C. Awasthi, who conducted post mortem examination, in his cross examination has not ruled out possibility that the deceased could have died by falling down over the rock. There is no

injury of any sharp edged weapon or fire arm injury or otherwise where after dead body appears to have been thrown in the rivulet.

10. For the reasons as discussed above, in our considered opinion from the evidence on record, it is not proved beyond reasonable doubt if the accused Surendra Singh and Anand Singh with 3-4 other persons, formed an unlawful assembly or furtherance to common object committed the murder of Pushkar Singh or caused disappearance of the evidence of commission of murder. Accordingly, since none of the charges are proved beyond reasonable doubt against the accused/appellants, the impugned judgment and order dated 22.04,1982, passed by learned trial court is liable to the set aside. Accordingly, the judgment and order dated 22.04.1982, passed by learned Sessions Judge, Chamoli, Camp Karanprayag in Sessions Trail No. 14 of 1981 is set aside. And appeal is allowed. Accused/appellants Surendra Singh and Anand Singh are acquitted of the charges of offences punishable under Sections 147, 302/149 and 201 I.P.C., framed against them, giving them benefit of reasonable doubt. They are on bail. They need not surrender. Send the lower court record back to the trial court.

(Dharam Veer, J.) (Prafulla C. Pant, J.)

Dt:23.02.2007
Sweta